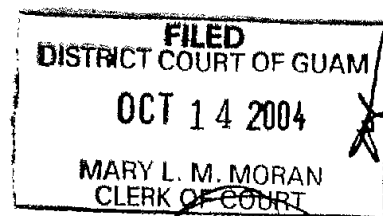


JACQUES G. BRONZE
LAW OFFICES OF BRONZE & TANG, P.C.
BankPacific Building, Suite 201
825 South Marine Drive
Tamuning, Guam 96913
Telephone No.: (671) 646-2001
Facsimile No.: (671) 647-7671

RICHARD A. PIPES
LAW OFFICES OF RICHARD A. PIPES
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825 South Marine Drive
Tamuning, Guam 96913
Telephone No.: (671) 646-2001



Attorneys for Defendant The Hongkong and Shanghai Banking Corporation Ltd.

IN THE DISTRICT COURT OF GUAM

ALAN SADHWANI, LAJU)
SADHWANI, and K. SADHWANI'S)
INC., a Guam corporation,)

Plaintiffs,)

v.)

HONGKONG AND SHANGHAI)
BANKING CORPORATION, LTD.,)
et al.,)

Defendants.)

CIVIL CASE NO. 03-00036

**SECOND DECLARATION OF
RICHARD A. PIPES SUPPORTING
HSBC'S OPPOSITION TO EX PARTE
MOTION FOR EXTENSION OF
TIME TO SERVE EXPERT WITNESS
DISCLOSURES**

I, RICHARD A. PIPES, do hereby declare as follows:

1. I am over the age of eighteen (18) years and competent to make this Declaration.

I have personal knowledge of the matters stated herein and would be competent to testify thereto at any proceedings.

ORIGINAL

2. I am admitted to practice before this Court and am co-counsel responsible for the representation of Defendant The Hongkong and Shanghai Banking Corporation Limited ("HSBC").

3. In their Reply Memorandum in Support of Ex Parte Motion for Extension of Time to Serve Expert Witness Disclosures (the "KSI Memo") filed on October 12, 2004, Plaintiffs argue that I should not have made plans to be off-island for the Christmas holidays this year because "in the few months before trial numerous issues and proceedings may arise which will require counsel's availability and work." *KSI Memo at 6*. However, at the time I made my plans for travel the current scheduling and trial dates were known and taken into consideration. The problem is that Plaintiffs' attempts to severely compact the schedule and trial of this case were **NOT** known when my plans were made. Plaintiffs and their counsel waited until this late date, a year after they filed their Complaint and three months after HSBC disclosed its expert, to make any effort to hire supposed experts. It is Plaintiffs' dilatory conduct which will cause the scheduling problems, not a trip I planned with the current schedule in mind. It is unreasonable for Plaintiffs to argue that I should have assumed that they would wait until the last minute to look for experts and the Court might allow them to disclose such experts and their accompanying reports less than 60 days before trial is set to commence and that expert depositions could occur during the three weeks just prior to trial.

4. In addition to visiting with my family in St. Louis in December there is another

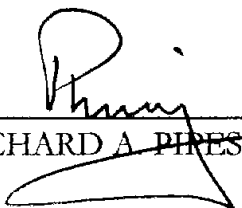
reason why I will need to travel off-island. I would have liked to keep my personal medical problems out of consideration in this case, but Plaintiffs' unreasonable demands to compact the discovery and trial schedule in this case necessitate that I present such information to this Court. Since August, 2003, I have had four separate surgical procedures for the removal of kidney stones and the placing of "stints" in my ureters. Because the kidney stones remained undiagnosed or misdiagnosed for years by certain medical care providers, I have significant damage to both kidneys which is irreparable. I have filed a lawsuit against Pacificare Asia Pacific regarding the negligent care I received and a copy of my Complaint is attached hereto as Exhibit "A" and incorporated herein by this reference. The most recent surgical procedure was performed in August, 2004, by Dr. Steven Bigg, of Urologic Surgeons, Inc., in St. Louis, Missouri. A copy of my most recent billing from Dr. Bigg which describes the procedures he performed is attached as Exhibit "B" and incorporated herein by this reference. Since my left kidney is damaged and could not alone support me, I must take very good care of my right kidney which I am told is not damaged as significantly as my left. I have a surgical follow-up appointment with Dr. Bigg on December 29, 2004, in St. Louis and will undergo further testing of both kidneys on December 30, 2004. For the reasons discussed above, it is necessary that I travel to St. Louis for medical treatment.

5. Attached hereto as Exhibit "C" and incorporated herein by this reference is a true copy of a Declaration of Thomas A. Tarter Supporting HSBC's Opposition to Ex Parte Motion

for Extension of Time to Serve Expert Witness Disclosures sent to me via facsimile. The signed original of Mr. Tarter's Declaration will be filed with this Court upon receipt from Sherman Oaks, California, where Mr. Tarter's offices are located.

I declare under penalty of perjury under the laws of the United States and Guam that the foregoing is true and correct.

Dated this 14th day of October, 2004.



RICHARD A. PIPES

2004 JUN -6 PM 3:22

CLERK OF COURT

BY: _____

LAW OFFICE OF
ROBERT L. KEOGH
POST OFFICE BOX GZ
HAGATÑA, GUAM 96932
TELEPHONE (671) 472-6895

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF GUAM

CS 0670-04

RICHARD A. PIPES,

CIVIL CASE NO. CV _____

Plaintiff,

vs.

COMPLAINT AND DEMAND
FOR JURY TRIAL

PACIFICARE ASIA PACIFIC and
JOHN DOE INSURANCE COMPANY,

Defendants.

INTRODUCTION

1. This is an action for damages for personal injuries arising from alleged medical malpractice.

JURISDICTION

2. This Court has jurisdiction over this matter pursuant to 48 U.S.C. §1424, as amended, and 7 GCA §3105.

PARTIES

3. Plaintiff Richard Pipes ("Pipes") is an adult individual and resident of Guam. At all relevant times herein, plaintiff Pipes was a member of defendant PacificCare Asia Pacific.

4. Defendant PacificCare Asia Pacific ("PCAP") is a corporation

EXHIBIT

A

1 COMPLAINT AND DEMAND FOR JURY TRIAL
2 Pipes v. Pacificare
3 Page 2

4 licensed to do business on Guam. At all relevant times herein,
5 PCAP was in the business of, among other things, providing health
6 insurance and medical care to its members.

7
8 5. On information and belief, defendant Doe Insurance Company
9 (hereinafter "Doe") is an insurance company licensed to do business
10 on Guam or has insured a risk on Guam and hence is subject to the
11 jurisdiction of this Court, and at all relevant times herein had
12 issued and maintained in full force and effect a policy covering
13 defendant Pacificare Asia Pacific for, inter alia, injuries to
14 third persons, including medical malpractice, resulting from acts
15 of their agents and employees.

16
17 **FACTS**

18 6. From July 15, 2001 and August 1, 2003, plaintiff Pipes was
19 treated as a patient by defendant.

20
21 7. At said time and place, respondent PCAP's personnel negligently
22 provided medical services to Richard Pipes in that they:

- 23
24 a) Failed to provide examination by a physician;
25 b) Failed to provide treatment by a physician;
26 c) Provided medical care through an unsupervised physician's
27 assistant;
28 d) Failed to diagnose kidney stones;

1 COMPLAINT AND DEMAND FOR JURY TRIAL
2 Pipes v. Pacificare
3 Page 3

- 4 e) Failed to order any kidney imaging studies;
5 f) Failed to evaluate blood in the urine;
6 g) Failed to evaluate pus in the urine;
7

8 8. As a direct and proximate result of the negligent medical
9 treatment provided to Mr. Pipes, plaintiff sustained permanent
10 kidney damage.
11

12 9. The earliest possible date of discovery was July 10, 2003.
13

14 10. On June 8, 2004, plaintiff Pipes served a "Petition and Demand
15 for Arbitration" on defendants. A true and accurate copy of the
16 Petition is attached hereto as "Exhibit"A". In paragraph 2 of the
17 Petition, plaintiff Pipes expressly reserved any grounds he may
18 have for challenging the enforceability of any arbitration
19 agreement and the constitutionality and/or organicity of the Guam
20 Medical Malpractice Mandatory Arbitration Act.
21

22
23 CLAIM FOR RELIEF
24

25 11. Plaintiff Pipes repeats and realleges each and every
26 allegation of paragraphs 1 through 10 of the Complaint herein.
27

28 / /

1 COMPLAINT AND DEMAND FOR JURY TRIAL
2 Pipes v. Pacificare
3 Page 4

4 12. As a direct and proximate result of the negligence of
5 defendants, plaintiff Pipes suffered injuries including, but not
6 limited to, permanent kidney damage, which have caused and continue
7 to cause him pain and suffering.

8
9 13. As a further direct and proximate result of the negligence of
10 defendants, plaintiff Pipes has incurred and continues to incur
11 medical and incidental expenses in an amount to be proven at trial.

12
13 SECOND CLAIM - DEFENDANT JOHN DOE INSURANCE

14
15 14. Plaintiff repeats and realleges each and every allegation of
16 paragraphs 1 through 10, 12 through 13 of the complaint herein.

17
18 15. On information and belief, at all relevant times herein,
19 defendant PCAP was insured by an insurance policy issued by
20 defendant Doe Insurance covering liability for claims such as those
21 set forth above. Said insurance policy was in full force and
22 effect at all relevant times herein.

23
24 16. Pursuant to the coverage contained in said insurance policy,
25 and pursuant to 22 GCA §18305, plaintiff is entitled to maintain a
26 direct action against defendant John Doe Insurance upon the terms
27 and limits of the policy and, accordingly, plaintiff is entitled to
28 recover against defendant John Doe Insurance in an amount equal to

1 COMPLAINT AND DEMAND FOR JURY TRIAL
2 Pipes v. Pacificare
3 Page 5

4 any judgment recovered against defendant PCAP up to applicable
5 policy limits.

6
7 WHEREFORE, plaintiff prays for relief as follows:

8
9 1. General damages for the personal injury of plaintiff
10 Richard Pipes in an amount to be proven;

11
12 2. Damages for past and future medical and incidental costs
13 of plaintiff Richard Pipes in an amount to be proven;

14
15 3. Costs of suit; and

16
17 4. Such other and further relief as the Court may deem just
18 and proper.

19
20 LAW OFFICE OF ROBERT L. KEOGH
21 Attorneys for Plaintiff

22
23 DATE: 6/8/04

24 By: 

25 ROBERT L. KEOGH

26 JURY DEMAND

27 Plaintiff hereby demands trial by jury of six (6) on all
28 issues so triable.

1 LAW OFFICE OF
2 **ROBERT L. KEOGH**
3 POST OFFICE BOX GZ
4 HAGATÑA, GUAM 96932
5 TELEPHONE (671) 472-6895

6 Attorneys for Petitioner

7 **ARBITRATION PROCEEDING**

8 **RICHARD A. PIPES,**

9 Petitioner,

10 vs.

11 **PACIFICARE ASIA PACIFIC and**
12 **JOHN DOE INSURANCE COMPANY,**

13 Respondents.

14 **PETITION AND DEMAND**
15 **FOR ARBITRATION**

16 **INTRODUCTION**

17 1. This is a petition for arbitration of a medical and
18 administrative malpractice claim brought by Petitioner Richard A.
19 Pipes against respondent PacificCare Asia Pacific.

20 **JURISDICTION**

21 2. A duly constituted arbitration panel shall have jurisdiction
22 over this matter pursuant to the terms of an agreement between the
23 respondent and the petitioner's employer, or, in the alternative,
24 pursuant to the Guam Medical Malpractice Mandatory Arbitration Act,
25 provided, however, that petitioner is not waiving any ground he may
26 have for challenging the enforceability of such contractual terms
27 or the constitutionality and/or organicity of such statute.

1 PETITION AND DEMAND
2 FOR ARBITRATION

3 Page 2

4 PARTIES

5 3. Petitioner Richard A. Pipes is an adult individual and a
6 resident of Guam. His address for purposes of this claim is: c/o
7 Robert L. Keogh, Law Office of Robert L. Keogh, C&A Professional
8 Bldg., 251 Martyr Street, Suite 105, Hagatña, Guam 96910. At all
9 relevant times herein, petitioner was a member of respondent
10 PacifiCare Asia Pacific.

11
12 4. Respondent PacifiCare Asia Pacific ("PCAP") is a corporation
13 licensed to do business on Guam. At all relevant times herein,
14 PCAP was in the business of, among other things, providing health
15 insurance and medical care to its members.

16
17 5. On information and belief, defendant Doe Insurance Company
18 (hereinafter "Doe") is an insurance company licensed to do business
19 on Guam or has insured a risk on Guam and hence is subject to the
20 jurisdiction of this Court, and at all relevant times herein had
21 issued and maintained in full force and effect a policy covering
22 respondent Pacificare Asia Pacific for, inter alia, injuries to
23 third persons, including medical malpractice, resulting from acts
24 of their agents and employees.

25
26 / /

27 /

1 PETITION AND DEMAND
2 FOR ARBITRATION

3 Page 3

4 **FACTS**

5 6. Between July 15, 2001 and August 1, 2003, Richard Pipes was
6 seen and was given medical treatment as a patient at the PCAP
7 medical facility.

8
9 7. At said time and place, respondent PCAP's personnel
10 negligently provided medical services to Richard Pipes in that
11 they:

- 12 a) Failed to provide examination by a physician;
13 b) Failed to provide treatment by a physician;
14 c) Provided medical care through an unsupervised physician's
15 assistant;
16 d) Failed to diagnose kidney stones;
17 e) Failed to order any kidney imaging studies;
18 f) Failed to evaluate blood in the urine;
19 g) Failed to evaluate pus in the urine;

20
21 8. The medical treatment provided to Mr. Pipes fell below the
22 standard of care, and as a result thereof, Richard Pipes sustained
23 permanent kidney damage and growth in Mr. Pipe's kidney stones to
24 the extent that he suffered permanent injury and impairment to both
25 right and left kidneys; has required and in the future will require
26 specialized mainland medical care; will possibly need kidney
27 dialysis; will possibly need a kidney transplant.

1 PETITION AND DEMAND
2 FOR ARBITRATION

3 Page 4

4 9. The earliest possible date of discovery was July 10, 2003.
5

6 CLAIMS FOR RELIEF
7 FIRST CLAIM - PERSONAL INJURIES OF
8 RICHARD A. PIPES

9 10. Petitioner repeats and realleges each and every allegation of
10 paragraphs 1 through 9 of the petition herein.
11

12 11. As a direct and proximate result of the negligence of PCAP
13 and its employee, Richard Pipes suffered injuries including, but
14 not limited to, kidney damage which have caused and continue to
15 cause him pain and suffering.
16

17 12. As a further direct and proximate result of the negligence of
18 respondent PCAP and its employee, Richard Pipes has incurred and
19 continues to incur medical and incidental expenses in an amount to
20 be proven.
21

22 13. As a further direct and proximate result of the negligence of
23 respondent PCAP and its employee, Richard Pipes has lost and will
24 continue to lose income in an amount to be proven.
25

26 / / /

27 / /

4 SECOND CLAIM - DEFENDANT JOHN DOE INSURANCE
5

6 14. Petitioner repeats and realleges each and every allegation of
7 paragraphs 1 through 9, 11 through 13 of the petition herein.
8

9 15. On information and belief, at all relevant times herein,
10 respondent PCAP was insured by an insurance policy issued by
11 respondent John Doe Insurance covering liability for claims such as
12 those set forth above. Said insurance policy was in full force and
13 effect at all relevant times herein.
14

15 16. Pursuant to the coverage contained in said insurance policy,
16 and pursuant to 22 GCA §18305, petitioner is entitled to maintain
17 a direct action against respondent John Doe Insurance upon the
18 terms and limits of the policy and, accordingly, petitioner is
19 entitled to recover against respondent John Doe Insurance in an
20 amount equal to any judgment recovered against respondent PCAP up
21 to applicable policy limits.
22

23 WHEREFORE, petitioner demands arbitration for his claim and prays
24 for relief as follows:
25

26 1. General damages for the personal injury of petitioner
27 Richard A. Pipes in an amount to be proven;
28

PETITION AND DEMAND
FOR ARBITRATION

Page 6

2. Damages for past and future medical and incidental costs
of Richard Pipes in an amount to be proven;

3. Damages for past and future lost income of Richard Pipes
in an amount to be proven;

4. Costs of arbitration to the fullest extent allowable; and

5. Such other and further relief as the arbitrators may deem
just and proper.

Respectfully submitted,

LAW OFFICE OF ROBERT L. KEOGH
Attorneys for Petitioner

DATE:

6/8/04

By:

ROBERT L. KEOGH

PETITION AND DEMAND
FOR ARBITRATION

Page 7

VERIFICATION

I, the undersigned, being first duly sworn, depose and say that I am a party to the above-entitled matter; the foregoing statements are true of my own knowledge, except as to matters which are therein stated on my information or belief; and as to those matters I believe them to be true.

DATE:

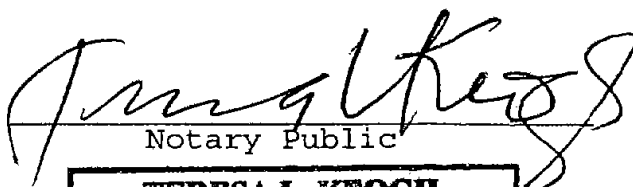
8 JUN 04


RICHARD A. PIPES

In and For Guam, U.S.A.)
) ss.
City of Hagatña)

SUBSCRIBED AND SWORN TO before me this 8th day of

June, 2004 by Richard A. Pipes.


Notary Public

TERESA L. KEOGH
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: June 6, 2005
P.O. Box GZ Hagatña, Guam 96932

UROLOGIC SURGEONS, INC.
PO Box 502296
Saint Louis, MO 63150-2296

J. Perry Lovinggood, M.D.
Steven W. Bigg, M.D. Kent L. Adkins, M.D.

VISA <input type="checkbox"/>		MasterCard <input type="checkbox"/>		DISCOVER <input type="checkbox"/>	
CARD NUMBER			AUTHORIZATION CODE: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
SIGNATURE			EXP. DATE		
STATEMENT DATE 09/24/04		PAY THIS AMOUNT 1799.00		ACCT. # 62645	
SHOW AMOUNT PAID HERE				\$	

ADDRESSEE:

REMIT TO:

ADDRESS SERVICE REQUESTED

|||||

RICHARD A PIPES 5 2
825 S MARINE DR STE 201
TAMUNING, GU 96913-3416

|||||

UROLOGIC SURGEONS, INC.
PO Box 502296
Saint Louis, MO 63150-2296

☐ Please check box if above address is incorrect or insurance information has changed, and indicate change(s) on reverse side.

STATEMENT

PLEASE DETACH AND RETURN TOP PORTION WITH YOUR PAYMENT

Date	Description	Charge	Medicare Receipts	Insurance Receipts	Patient Receipts	Adjust	Balance	Ins Pend	Message
08/24/04	NP OFFICE VISIT LEVEL 2	90.00	.00	.00	.00	.00	90.00		
08/24/04	UA DIPSTICK	11.00	.00	.00	.00	.00	11.00		
08/26/04	OFFICE VISIT EST PT LEVEL 2	52.00	.00	.00	25.00	.00	27.00		
08/30/04	CYSTO URETEROSCOPY LITHOTRIPSY	2635.00	.00	.00	1500.00	.00	1135.00		
08/30/04	CYSTO INSERT INDWELLING URET S	664.00	.00	.00	.00	.00	664.00		
09/02/04	POST-OP VISIT	.00	.00	.00	.00	.00	.00		

** PAYMENT DUE UPON RECEIPT **

THANK YOU

Current	30 Days	60 Days	90 Days	120 Days	Total Balance	Ins Pending	Now Due
1799.00	.00	.00	.00	.00	1799.00	.00	1799.00

Message
COPAYMENTS ARE DUE AT THE TIME OF SERVICE

Account Number
62645
Statement Date
09/24/04
Billing Questions
(314) 741-8500

Make Checks Payable To:

UROLOGIC SURGEONS, INC.
PO Box 502296
Saint Louis, MO 63150-2296

EXHIBIT

B

JACQUES G. BRONZE
LAW OFFICES OF BRONZE & TANG, P.C.
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825 South Marine Drive
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Telephone No.: (671) 646-2001
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BankPacific Building, Suite 201
825 South Marine Drive
Tamuning, Guam 96913
Telephone No.: (671) 646-2001

Attorneys for Defendant The Hongkong and Shanghai Banking Corporation Ltd.

IN THE DISTRICT COURT OF GUAM

ALAN SADHWANI, LAJU)
SADHWANI, and K. SADIWANI'S)
INC., a Guam corporation,)
)
Plaintiffs,)
)
v.)
)
HONGKONG AND SHANGHAI)
BANKING CORPORATION, LTD.,)
et al.,)
Defendants.)

CIVIL CASE NO. 03-00036

**DECLARATION OF THOMAS A.
TARTER SUPPORTING HSBC'S
OPPOSITION TO EX PARTE
MOTION FOR EXTENSION OF
TIME TO SERVE EXPERT
WITNESS DISCLOSURES**

I, THOMAS A. TARTER, do hereby declare as follows:

1. I am over the age of eighteen (18) years and competent to make this Declaration. I have personal knowledge of the matters stated herein and would be competent to testify thereto at any proceedings.

EXHIBIT

C

2. I am the Managing Director of The Andela Consulting Group and I have been retained in this matter to provide litigation consulting, and if necessary, expert witness testimony at deposition and trial in this matter. I have had more than 35 years of experience in the financial institutions industry and my qualifications are outlined in my Report dated July 18, 2004, which I understand has been attached to a Declaration filed by Richard A. Pipes filed with this Court on October 8, 2004. As shown in my Report, I have been retained as a litigation consultant on numerous occasions. I have testified at deposition and trial as an expert witness in almost one hundred cases since 1995. I have also been retained in over 500 cases by clients that have included financial institutions, insurance companies, individuals, business entities and governmental agencies. My litigation consulting has been relatively balanced between plaintiff and defense.

3. I have been provided with and read a copy of the Plaintiffs' Reply Memorandum in Support of Ex Parte Motion for Extension of Time to Serve Expert Witness Disclosures (the "KSI Memo") that was apparently filed with this Court on October 12, 2004. On page 5 of the KSI Memo Plaintiffs' counsel argues that rebuttal or supplemental reports of experts may not even be required in this case and that, in any event, depositions of experts "are routinely taken just prior to and even during trial".

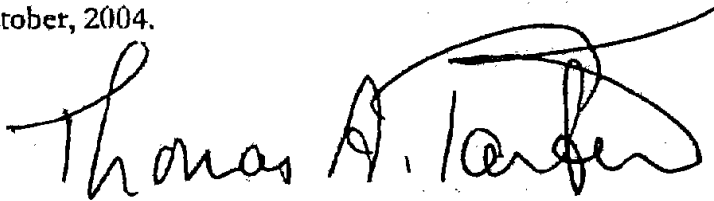
4. Based upon my experience as an expert witness in over five hundred cases of which almost 100 involved deposition or trial testimony, I believe such arguments to be without foundation. It is **NOT** routine or customary for expert depositions to be taken just before or during trial. In my experience, this has only happened in rare instances because of emergency circumstances which, to my knowledge, are not present in this case. Expert depositions are normally taken at least 45 - 60 days before trial to allow adequate preparation time for all parties as well as the preparation of supplemental or rebuttal reports by expert witnesses, which may themselves require additional discovery or depositions. Further, in my experience it is common practice for one party's expert to provide a rebuttal or supplemental report following the disclosure of the opposing party's expert and the deposition of such

witness. Additionally, with respect to Plaintiff lender liability litigation, it has been my experience that Plaintiff's counsel routinely engage experts prior to the filing of litigation and certainly early on in the process. It is my opinion that there has been ample discovery for any banking industry expert to render at least preliminary opinions for the Court's consideration. The absence of any such reports is very surprising to me, based upon the numerous documents that have been produced and depositions that have taken place.

5. It is my firm belief that granting the motion to extend the deadline for disclosure of experts and their reports, as requested by Plaintiffs, is abusive. Based upon my experience, if the Plaintiffs' had a banking industry expert, he/she should have been easily able to produce a report for the Court's consideration rather than waiting to the very eve of trial.

I declare under penalty of perjury under the laws of the United States and Guam that the foregoing is true and correct.

Dated this 12th day of October, 2004.

A handwritten signature in black ink, appearing to read "Thomas A. Tarter", with a large, sweeping flourish over the last name.

THOMAS A. TARTER